

§ 380.11

into consideration the timeliness and reliability of the statements being considered.

(3) The term “obligation” means, with respect to any covered financial company:

(i) Any guarantee issued by the FDIC on behalf of the covered financial company;

(ii) Any amount borrowed pursuant to section 210(n)(5)(A) of the Dodd-Frank Act; and

(iii) Any other obligation with respect to the covered financial company for which the FDIC has a direct or contingent liability to pay any amount.

(4) The term “total consolidated assets of each covered financial company that are available for repayment” means the difference between:

(i) The total assets of the covered financial company on a consolidated basis that are available for liquidation during the operation of the receivership; and

(ii) To the extent included in (b)(4)(i) of this section, all assets that are separated from, or made unavailable to, the covered financial company by a statutory or regulatory barrier that prevents the covered financial company from possessing or selling assets and using the proceeds from the sale of such assets.

[77 FR 37557, June 22, 2012]

§ 380.11 Treatment of mutual insurance holding companies.

A mutual insurance holding company shall be treated as an insurance company for the purpose of section 203(e) of the Dodd-Frank Act, 12 U.S.C. 5383(e); provided that—

(a) The company is subject to the insurance laws of the state of its domicile, including, specifically and without limitation, a statutory regime for the rehabilitation or liquidation of insurance companies that are in default or in danger of default;

(b) The company is not subject to bankruptcy proceedings under title 11 of the United States Code;

(c) The largest United States subsidiary of the company (as measured by total assets as of the end of the previous calendar quarter) is an insurance company or an intermediate insurance stock holding company; and

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(d) The assets and investments of the company are limited to the securities of an intermediate insurance stock holding company, the securities of the converted mutual insurance company and other assets and securities of the type authorized for holding and investment by an insurance company domiciled in its state of incorporation.

[77 FR 25353, Apr. 30, 2012]

§ 380.12 Enforcement of subsidiary and affiliate contracts by the FDIC as receiver of a covered financial company.

(a) *General.* (1) Contracts of subsidiaries or affiliates of a covered financial company that are linked to or supported by the covered financial company shall remain in full force and effect notwithstanding any specified financial condition clause contained in such contract and no counterparty shall be entitled to terminate, accelerate, liquidate or exercise any other remedy arising solely by reason of such specified financial condition clause. The Corporation as receiver for the covered financial company shall have the power to enforce such contracts according to their terms.

(2) Notwithstanding paragraph (a)(1) of this section, if the obligations under such contract are supported by the covered financial company then such contract shall be enforceable only if—

(i) Any such support together with all related assets and liabilities are transferred to and assumed by a qualified transferee not later than 5 p.m. (eastern time) on the business day following the date of appointment of the Corporation as receiver for the covered financial company; or

(ii) If and to the extent paragraph (a)(2)(i) of this section is not satisfied, the Corporation as receiver otherwise provides adequate protection to the counterparties to such contracts with respect to the covered financial company’s support of the obligations or liabilities of the subsidiary or affiliate and provides notice consistent with the requirements of paragraph (d) of this section not later than 5 p.m. (eastern time) on the business day following the date of appointment of the Corporation as receiver.

(3) The Corporation as receiver of a subsidiary of a covered financial company (including a failed insured depository institution that is a subsidiary of a covered financial company) may enforce any contract that is enforceable by the Corporation as receiver for a covered financial company under paragraphs (a)(1) and (2) of this section.

(b) *Definitions.* For purposes of this part, the following terms shall have the meanings set forth below:

(1) A contract is “*linked*” to a covered financial company if it contains a specified financial condition clause that specifies the covered financial company.

(2)(i) A “*specified financial condition clause*” means any provision of any contract (whether expressly stated in the contract or incorporated by reference to any other contract, agreement or document) that permits a contract counterparty to terminate, accelerate, liquidate or exercise any other remedy under any contract to which the subsidiary or affiliate is a party or to obtain possession or exercise control over any property of the subsidiary or affiliate or affect any contractual rights of the subsidiary or affiliate directly or indirectly based upon or by reason of

(A) A change in the financial condition or the insolvency of a specified company that is a covered financial company;

(B) The appointment of the FDIC as receiver for the specified company or any actions incidental thereto including, without limitation, the filing of a petition seeking judicial action with respect to the appointment of the Corporation as receiver for the specified company or the issuance of recommendations or determinations of systemic risk;

(C) The exercise of rights or powers by the Corporation as receiver for the specified company, including, without limitation, the appointment of the Securities Investor Protection Corporation (SIPC) as trustee in the case of a specified company that is a covered broker-dealer and the exercise by SIPC of all of its rights and powers as trustee;

(D) The transfer of assets or liabilities to a bridge financial company or other qualified transferee;

(E) Any actions taken by the FDIC as receiver for the specified company to effectuate the liquidation of the specified company;

(F) Any actions taken by or on behalf of the bridge financial company to operate and terminate the bridge financial company including the dissolution, conversion, merger or termination of a bridge financial company or actions incidental or related thereto; or

(G) The transfer of assets or interests in a transferee bridge financial company or its successor in full or partial satisfaction of creditors’ claims against the covered financial company.

(ii) Without limiting the general language of paragraphs (b)(1) and (2) of this section, a specified financial condition clause includes a “walkaway clause” as defined in 12 U.S.C. 5390(c)(8)(F)(iii) or any regulations promulgated thereunder.

(3) The term “*support*” means undertaking any of the following for the purpose of supporting the contractual obligations of a subsidiary or affiliate of a covered financial company for the benefit of a counterparty to a linked contract—

(i) To guarantee, indemnify, undertake to make any loan or advance to or on behalf of the subsidiary or affiliate;

(ii) To undertake to make capital contributions to the subsidiary or affiliate; or

(iii) To be contractually obligated to provide any other financial assistance to the subsidiary or affiliate.

(4) The term “*related assets and liabilities*” means—

(i) Any assets of the covered financial company that directly serve as collateral for the covered financial company’s support (including a perfected security interest therein or equivalent under applicable law);

(ii) Any rights of offset or setoff or netting arrangements that directly arise out of or directly relate to the covered financial company’s support of the obligations or liabilities of its subsidiary or affiliate; and

(iii) Any liabilities of the covered financial company that directly arise out of or directly relate to its support

of the obligations or liabilities of the subsidiary or affiliate.

(5) A “*qualified transferee*” means any bridge financial company or any third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding).

(6) A “*successor*” of a bridge financial company means

(i) A company into which the bridge financial company is converted by way of incorporation under the laws of a State of the United States; or

(ii) The surviving company of a merger or consolidation of the bridge financial company with another company (whether before or after the conversion (if any) of the bridge financial company).

(c) *Adequate protection.* The Corporation as receiver for a covered financial company may provide adequate protection with respect to a covered financial company’s support of the obligations and liabilities of a subsidiary or an affiliate pursuant to paragraph (a)(2)(ii) of this section by any of the following means:

(1) Making a cash payment or periodic cash payments to the counterparties of the contract to the extent that the failure to cause the assignment and assumption of the covered financial company’s support and related assets and liabilities causes a loss to the counterparties;

(2) Providing to the counterparties a guaranty, issued by the Corporation as receiver for the covered financial company, of the obligations of the subsidiary or affiliate of the covered financial company under the contract; or

(3) Providing relief that will result in the realization by the counterparty of the indubitable equivalent of the covered financial company’s support of such obligations or liabilities.

(d) *Notice of transfer of support or provision of adequate protection.* If the Corporation as receiver for a covered financial company transfers any support and related assets and liabilities of the covered financial company in accordance with paragraph (a)(2)(i) of this section or provides adequate protection in accordance with paragraph (a)(2)(ii)

of this section, it shall promptly take steps to notify contract counterparties of such transfer or provision of adequate protection. Notice shall be given in a manner reasonably calculated to provide notification in a timely manner, including, but not limited to, notice posted on the Web site of the Corporation, the covered financial company or the subsidiary or affiliate, notice via electronic media, or notice by publication. Neither the failure to provide actual notice to any party nor the lack of actual knowledge on the part of any party shall affect the authority of the Corporation to enforce any contract or exercise any rights or powers under this section.

[77 FR 63214, Oct. 16, 2012]

§ 380.13 Restrictions on sale of assets of a covered financial company by the Federal Deposit Insurance Corporation.

(a) *Purpose and applicability.* (1) *Purpose.* The purpose of this section is to prohibit individuals or entities that profited or engaged in wrongdoing at the expense of a covered financial company or an insured depository institution, or seriously mismanaged a covered financial company or an insured depository institution, from buying assets of a covered financial company from the FDIC.

(2) *Applicability.* (i) The restrictions of this section apply to the sale of assets of a covered financial company by the FDIC as receiver or in its corporate capacity.

(ii) The restrictions in this section apply to the sale of assets of a bridge financial company if:

(A) The sale is not in the ordinary course of business of the bridge financial company, and

(B) The approval or non-objection of the FDIC is required in connection with the sale according to the charter, articles of association, bylaws or other documents or instruments establishing the governance of the bridge financial company and the authorities of its board of directors and executive officers.

(iii) In the case of a sale of securities backed by a pool of assets that may include assets of a covered financial company by a trust or other entity, this